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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 450

IN THE MATTER OF:

J. K. ABERNATHY, SS No. 244-42-7854,
Employee, et al, *Appellants*

EASTERN AIR LINES, INC., Employer,

and

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA, *Appellee*

On Appeal from the Supreme Court of North Carolina

JURISDICTIONAL STATEMENT AND APPENDIX THERETO

On Behalf of Appellants — All Employees of Eastern Air Lines, Inc. Except Flight Captains and Air Line Pilots

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JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANTS

Appellants, all of the North Carolina employees of Eastern Air Lines, Inc., except the flight captains and air line pilots based in North Carolina, appeal from the Judgment of the Supreme Court of North Carolina entered in this action on April 10, 1963.

OPINIONS BELOW

The opinion[1] of the Supreme Court of North Carolina is reported in 259 N.C. 190 and 130 S.E. 2d 292. The case was appealed to that Court from the Superior Court of Mecklenburg County, North Carolina, which rendered judgment without written opinion.

JURISDICTION OF THIS COURT

The appellants, pursuant to the provisions of North Carolina General Statutes,[2] Chapter 96, Section 15 (1958), instituted this proceeding before the Employment Security Commission of North Carolina to recover unemployment insurance benefits during the period in which they were furloughed from their jobs as a result of a labor dispute between their employer, Eastern Air Lines, Inc., and certain of the Company's flight engineers.

The final judgment[3] of the Supreme Court of North Carolina, which appellants now bring to this Court for review, was filed and entered on April 10, 1963. No petition to rehear was filed, and the time for filing such a petition has expired.[4] On July 9, 1963, appellants filed Notice of Appeal to this Court with the Clerk of the Supreme Court of North Carolina. The jurisdiction of this Court is invoked under Title 28, U. S. Code, Section 1257, which provides in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could

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[1]Appendix, p. 27a. In the Matter of: J. K. Abernathy, 259 N.C. 190.

[2]Hereinafter cited as N.C.G.S.

[3]Record, p. 127. Herein "record" refers to the record certified to this Court by the Clerk of the Supreme Court of North Carolina.

[4]Record, p. 127.

be had, may be reviewed by the Supreme Court as follows:

. . .

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The following are among the decisions of this Court which sustain the Court's jurisdiction on this appeal: *Sherbert vs. Verner*, 10 L. Ed. 2d 965 and *Winters vs. New York*, 333 U.S. 507.

STATUTES INVOLVED

The North Carolina Employment Security Law provides in pertinent part as follows:

§ 96-14. Disqualification for benefits. — An individual shall be disqualified for benefits:

. . .

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified

under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit."

N.C.G.S. 96-14(4) (Supp. 1961)

Prior to its amendment in 1961, N.C.G.S. 96-14(4) provided in pertinent part as follows:

"An individual shall be disqualified for benefits . . . (4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that —

"(a) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"(b) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute. . . ."

QUESTIONS PRESENTED

When, as a result of a labor dispute, unemployment is imposed involuntarily upon a large number of em-

ployees who have no interest in the dispute, have no control over its progress, and will not be affected by its outcome, — is not a state statute, which arbitrarily disqualifies some but not all of such employees from receiving unemployment benefits, unreasonably discriminatory, and, as construed and applied to these appellants under the facts and circumstances of this case, violative of the rights guaranteed to the appellants by the Due Process and Equal Protection clauses of the United States Constitution?

STATEMENT OF THE CASE

This case originated before a Special Appeals Deputy of the North Carolina Employment Security Commission upon claims filed by some 650 employees of Eastern Air Lines, Inc. for unemployment benefits under the North Carolina Act,[1] with reference to a period in 1962 when they were out of work by reason of a general furlough imposed by their employer.

All of the appellants now before this Court were among those employees whose claims were referred to the Special Appeals Deputy for a determination on whether their unemployment had resulted from a labor dispute within the meaning of N. C. G. S. 96-14(4), and if so, whether that fact, under the circumstances revealed by the evidence, disqualified them from receiving benefits, their eligibility in all other respects having been established.

All of the evidence, upon which the Commission and the courts below based their findings and decisions, was developed at the hearing before the Spe-

[1]N.C.G.S. Chapter 96.

cial Appeals Deputy. This evidence was virtually undisputed, and clearly established the following facts which are material to a consideration of the questions now presented to this Court.

Eastern Air Lines, Inc., a common carrier of passengers and freight by air, employs some 17,900 persons throughout its system. The Company serves approximately 120 cities in 26 states covering the entire eastern half of the nation, and in addition has flights into Mexico, Puerto Rico, Bermuda and Canada.

Within North Carolina, Eastern has four bases of operation, namely, its facilities at the Charlotte, Raleigh-Durham and Greensboro-High Point airports, and its reservations computer center at Charlotte. It flies two-engine and four-engine piston aircraft into and out of all three of these airports, and in addition, flies pure jet aircraft into and out of the Charlotte air field.

To support its flight operations in North Carolina, Eastern employs a substantial number of ground personnel. With the exception of the flight attendants, all of the employees bringing this appeal were connected with the Company's ground operations,[1] and were residents of North Carolina living in or near the communities in which they worked. The services rendered by these employees were performed at the Com-

[1]Each of the appellants, during the period in question, came within one of the following designations utilized by Eastern to classify its North Carolina employees: accountants, sales, reservation personnel, secretaries, ticket counter personnel, communications personnel, dispatchers, flight attendants (based in North Carolina and assigned to two-engine piston aircraft), stock clerks, customers services personnel, mechanics, ramp service personnel, porters and cleaners.

pany's facilities in North Carolina and the employees were not ordinarily called upon to leave the community of their residence in the course of their work.

As the result of a controversy concerning the establishment of qualifications for the third member of the cockpit crew aboard pure jet aircraft operated by Eastern, most of the Company's 575 flight engineers, on June 23, 1962, refused to take their work assignments. Consequently, certain Eastern flights which required the services of a flight engineer were immediately cancelled. Shortly thereafter the Company elected to cease all of its operations, because, as stated by one of Eastern's officials, the Company anticipated considerable inconvenience to the public and substantial economic losses if it attempted to provide service on a curtailed basis. Eastern could have continued operation of its two-engine planes since they did not require a flight engineer, but for the above-stated reasons it elected not to do so. Until this time, approximately 35% of all of Eastern's loadings had been on two-engine aircraft, and the Company had operated numerous two-engine flights through its North Carolina facilities.

Almost simultaneously with this cessation of its flying operations, Eastern furloughed virtually all of its employees, including ground personnel. The effects of the strike were also quickly felt by other employers operating businesses at or near Eastern's facilities in North Carolina, and large numbers of employees at these other business locations were likewise thrown out of work.

None of the flight engineers were based in North Carolina and their refusal to carry out their work

assignments occurred in every instance at facilities outside of that State. The only contacts which the flight engineers normally had with North Carolina were on those occasions when the four-engine aircraft to which they were assigned landed to unload and load passengers and freight at the Charlotte, Raleigh and Greensboro airfields. The engineers' duties did not involve any substantial contact with other Eastern personnel at the North Carolina facilities, their function on the ground being limited to a brief inspection of the aircraft and a determination as to the necessity for refueling and distribution of the fuel load.

None of the appellants were members of the Flight Engineers' Union, nor were they directly or indirectly interested in the controversy between Eastern and its flight engineers. The wages, hours or other terms and conditions of employment of the appellants would not be affected, favorably or adversely, by the outcome of the dispute. Appellants had no control over the flight engineers' decision to strike, did not lend their support, financially or otherwise, to either side in the controversy, and did not picket or engage in any other type of activity which would manifest any interest in the flight engineers' cause. Indeed, no picketing or other strike activity occurred anywhere within the borders of the State of North Carolina. It is, therefore, an uncontroverted fact that appellants had no labor dispute with their employer and were in no way involved in anyone else's dispute with their employer. They were furloughed from their jobs through causes completely beyond their control and through no fault or choice of their own.

At the hearing before the Special Appeals Deputy for the Employment Security Commission, and at all

subsequent stages of the proceedings below, the appellants contended that their unemployment was not caused by a labor dispute within the meaning and scope of N. C. G. S. 96-14(4), and in the alternative, that if that statute should be construed as denying them unemployment benefits under the facts and circumstances of this case, then, the statute as so construed, should be deemed unreasonably discriminatory and held invalid as violative of the rights of the appellants guaranteed by the Equal Protection and Due Process clauses of the United States Constitution[1].

The Special Appeals Deputy found upon the facts before him that the appellants were unemployed by reason of a labor dispute in active progress at the establishment at which they had last been employed, and concluded that they were therefore ineligible to receive benefits as long as the dispute continued. This decision was based upon the theory that the word "establishment" as used in the statute should be construed in this case as embracing Eastern Air Lines' entire system.

At the same time, it was acknowledged by the Special Appeals Deputy that the Commission *was paying benefits* to all unemployed individuals who had been laid off from their jobs at business locations, not owned or operated by Eastern, but likewise forced to curtail or cease operations by reason of the same labor dispute. (Record, p. 11).

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[1]The constitutional issue was first raised orally at this initial hearing (Record, page 28) and was formally presented in appellants' application to the Commission for review of the Deputy's decision (Record Page 38 at Page 40).

Upon review by the full Commission, these findings and conclusions were affirmed, including the Deputy's construction of the word "establishment." In addition, however, the Commission found it to be "the intent of the Legislature to disqualify individuals from receiving benefits even if there were no labor dispute in active progress here in North Carolina, but if there was a labor dispute in active progress at another place owned by the employer, which supplies materials and services necessary to the continued and usual operation of the premises at which the individuals in North Carolina were employed."[1]

Neither the Special Appeals Deputy nor the full Commission undertook to decide the constitutional issue, it being their position that it is not within the province of an administrative tribunal to pass upon the validity of an Act of the legislature.[2]

The appellants nevertheless continued to bring forward the constitutional issue in their Assignments of Error, by which the decision of the full Commission was carried to the Superior Court of Mecklenburg County for review.[3]

Following a hearing, the Superior Court reversed the Commission, holding first that the employees were not disqualified under N. C. G. S. 96-14(4), and further that should the statute be construed as imposing such disqualification upon the appellants, its provisions as applied to the facts of this case would result in an unconstitutional discrimination against them.[4]

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[1]Appendix, p. 21a.
[2]Record, p. 28.
[3]Record, p. 81, at page 86.
[4]Appendix, p. 24a-26a.

Upon appeal by the Commission to the Supreme Court of North Carolina[1], all parties again advanced, both in their briefs and in oral argument, their respective positions as to the constitutional issues. In reversing the Superior Court and holding that the Commission had validly denied benefits to the appellants, the North Carolina Supreme Court observed that the 1961 Amendment had the effect of removing from N. C. G. S. 96-14(4) "the means therein provided by which an employee might escape disqualification," namely, that of showing to the Commission's satisfaction that he was not participating in, or financing, or directly interested in the labor dispute and did not belong to a grade or class of workers which had members who were participating or interested in the dispute.

The Court did not adopt the Commission's broad definition of "establishment," but relied instead upon the provisions of the amended statute which disqualified a worker not only where his unemployment was caused by a labor dispute in the place where he was employed, but also where it was caused by a dispute at another place, within or without North Carolina, provided *such other place was owned or operated by his employer* and supplied materials or services necessary to the continued operation of the place at which he was employed.

The Court then dismissed the appellants' contentions on the constitutional issue in the following words —

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[1]Record, p. 93.

". . . in passing the 1961 amendment the North Carolina General Assembly acted within its constitutional powers. 'When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome.' . . . [Citing cases] 'Legislative bodies may distinguish, select, and classify objects of legislation. . . . They may prescribe different regulations for different classes. . . . The one requirement is that the ordinance must affect all persons similarly situated or engaged in the same business without discrimination.' . . . [Citing cases] The unemployment insurance acts of the states contain certain worker disqualifications, among them, (1) discharge for misconduct, (2) refusal to accept other suitable employment, (3) participation in a strike. The power of the legislature to provide these disqualifications is not challenged. The further disqualification contained in the 1961 amendment involves a question of degree and not of principle."

GROUNDS FOR FINDING THAT THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The 1961 amendment to the "labor dispute" disqualification provision of the North Carolina Employment Security Law involves, in appellants' view, far more than a "question of degree" in the range of permissible state power to select and classify objects of social welfare programs. The amendment raises serious and far reaching questions of principle, and, as applied to the appellants in this case, encroaches so

far upon rights guaranteed by the United States Constitution as to require the intervention of this Court.

Appellants readily acknowledge that no state of the Union is under any obligation to make provision for unemployment benefits for its citizens. Nor is there any doubt but that a state electing to enter upon such a program has the power to establish reasonable standards, criteria, and classifications for measuring the program's coverage and scope, and the conditions upon which its benefits may be enjoyed or withheld.

Stated otherwise, the appellants are not here contending that a state law, defining the classes or groups of citizens who shall be disqualified from receiving unemployment compensation, is to be held invalid merely because in its application not all persons are accorded identical treatment, or because the methods of selection and classification might not appear wise or sound when tested against every conceivable circumstance or factual situation.

Appellants do contend, however, and upon sound authority, that when a State has embarked upon a program of collecting and administering an employment security fund, an admittedly eligible employee may not be deprived of the privilege of participating in its benefits, by imposition of statutory limitations that are either arbitrary in purpose or unreasonably discriminatory in application. *Sherbert vs. Verner*, 10 L. Ed. 2d 965 at page 971; *Flemming vs. Nestor*, 363 U. S. 603. It is submitted that the disqualification provisions in the North Carolina Act now under consideration are both arbitrary and discriminatory, and for that reason invalid under the broad guaranties of the Fourteenth Amendment.

In this case a large group of employees in the State of North Carolina was thrown out of work as a result of the refusal of Eastern's flight engineers to carry out their work assignments. In addition to Eastern's employees, this group included a considerable number of persons who had been employed by restaurants and other establishments at or near airport facilities in North Carolina, but who were laid off when their employers curtailed or discontinued operations in the face of losses in business normally derived from Eastern and its passengers.

As construed by the North Carolina Supreme Court, the 1961 amendment to the Employment Security Law singled out Eastern's employees from this group, solely because a labor dispute was found to be in progress at other premises operated by Eastern outside North Carolina, and upon this basis alone, disqualified them from receiving unemployment insurance benefits.

The fact that the statute did not impose such a disqualification upon the remaining workers in the group who were likewise unemployed by reason of the labor dispute at Eastern's "out-of-state locations" did not impress the Court. Nor was the Court impressed with the fact that the disqualified Eastern employees — like the other employees who were permitted to recover benefits — were indifferent bystanders, having no interest in or control over the labor dispute.

In upholding the statute under the facts and circumstances of this case, the Supreme Court of North Carolina disregarded certain plain mandates of the Fourteenth Amendment.

The classification established under N. C. G. S. 96-14(4) is clearly arbitrary in that: (1) It includes in the class of those disqualified some persons who do and others who do not stand in the same relationship to the object sought to be accomplished by the statute, and (2) it treats members of the same class differently, permitting some of those persons whose unemployment was caused by the labor dispute to recover benefits, while at the same time denying benefits to others similarly unemployed.

Certain constitutional principles have been established by the decisions of this Court which must be followed by a state legislature in enacting any social welfare program for its citizens. The question of the constitutionality of a State Unemployment Compensation Act was first presented to this Court in the case of *Carmichael vs. Southern Coal & Coke Co.*, 301 U.S. 495. In that case an employer had questioned the right of the State of Alabama to exact an unemployment tax from him, so that the Court was there primarily concerned with the power of a state to tax rather than the power to disqualify persons from receiving benefits under such an Act. However, the Court did pass upon the validity of the various classifications used by the Alabama Legislature in setting the terms and conditions of eligibility for benefits, that issue having been raised by the employer's contention that such classifications were so arbitrary that they deprived the Act of any public purpose which was, by virtue of the Fourteenth Amendment, a condition precedent to the State's power to tax.

The Court, with three members dissenting, held that the Alabama Act was not subject to any constitutional infirmity, and, in that part of its opinion which

dealt with the validity of the classifications contained in the Act, found that there were valid considerations which supplied ample justification for each of the classifications attacked.

The Court observed that a state legislature in working out a system of unemployment compensation could exercise a broad discretion in the selection of those persons or classes of persons who should benefit under the system, and that such classifications would be presumed by the Court to rest upon a reasonable basis if any state of facts would afford a reasonable ground for the legislature's choice. In the Court's view, the legislature, in extending benefits under the Act, was not bound to occupy the entire field but could legitimately concentrate on those persons or classes of persons whom it felt needed them most.

However, in a recent decision, *Flemming vs. Nestor*, 363 U. S. 603, this Court has likewise made it clear that once a legislative body undertakes to provide a social welfare program, and extends coverage to a class of persons, it may not withdraw such benefits from a selected group within the general class, by enacting a statute which "manifests a patently arbitrary classification, utterly lacking in any rational justification." *Id.* at 612. *Flemming* involved the validity of a section in the Social Security Act which provided for termination of benefits payable to an alien deported on the ground, among others, of Communist Party membership. It was contended that the section deprived an alien of an accrued property right in violation of the Due Process Clause. The Court, in rejecting this contention, concluded that benefits under the Act were noncontractual in nature, and that not every defeasance of benefits would violate the Due

Process Clause. After so concluding, however, the Court added the following words of caution:

> "This is not to say, however, that Congress may exercise its power to modify the statutory scheme free of all constitutional restraint. *The interest of a covered employee . . . is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause.*" *Id.* at 611. (Emphasis added).

This constitutional restraint imposed upon Congress in framing social welfare legislation was recently applied to state unemployment compensation laws in *Sherbert vs. Verner*, 10 L. Ed. 2d 965. There, this Court, following *Flemming*, held that a disqualification clause in South Carolina's Act could not "be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant's 'right' but merely a 'privilege.'" *Id.* at 971.

Thus, the decisions of this Court firmly establish the following principles in connection with unemployment legislation:

> (1) The mere fact that benefits received under such an Act are in the nature of a privilege rather than a vested right does not empower a state legislature to grant or withhold them arbitrarily or discriminatorily in violation of rights guaranteed by the Fourteenth Amendment; and
>
> (2) The classifications employed by the legislature for the purpose of designating who will and who will not qualify for benefits under the Act, must be held arbitrary and discriminatory where the classifications cannot be said to rest upon a rational basis.

While the Due Process and Equal Protection clauses of the Fourteenth Amendment are not coterminous in their spheres of protection, equality of privilege is fundamental in both. Each forbids class legislation which arbitrarily discriminates against some and favors others who are similarly situated.

A legislature in making classifications "must regard real resemblances and real differences between things and persons, and class them in accordance with their pertinence to the purpose in hand." *Truax vs. Corrigan*, 257 U.S. 312, 338.

It is submitted that the classification established under N. C. G. S. 96-14(4), when tested by the foregoing principles, cannot be held to rest upon such a basis under any state of facts.

What is the object to be achieved by the selection and classification attempted in this statute? Let it be assumed that the legislature may reasonably bar from unemployment benefits any employee who is out of work due to his own voluntary act of leaving his job, even where this action is motivated by his desire to exercise his right to engage in concerted activity, such as a strike. We may assume further that the state may go beyond this and include in the class of those to be disqualified all employees who are out of work as a result of such a strike, even though they are not themselves active strikers, if they are directly or indirectly supporting or otherwise interested in the strike or belong to a group or unit of workers who will be affected by its outcome. This sort of selection and classification has frequently been utilized in state unemployment compensation acts and was the approach followed in the North Carolina law prior to the 1961

Amendment. Justification for placing all such employees under the same disqualification can be found on several bases — the one most frequently advanced being the policy of the state to remain completely neutral in labor disputes.

But the 1961 Amendment to the North Carolina Act imposes a classification which serves none of the purposes that have been advanced by those relying upon it — for its disqualifying classification not only includes employees who have no interest in or connection with the labor dispute, but of more fundamental importance, this disqualifying classification *fails to include all of those who stand in precisely the same relation to the labor dispute*. Thus, as noted above, some of the "disinterested" employees in North Carolina who were thrown out of work because of the Flight Engineers' strike were allowed to recover benefits, while others were not, solely upon the basis of whether they were employees of an employer who happened to be the operator of an out-of-state premises at which the dispute was taking place. True, this is a "difference," but mere difference is never enough to justify a classification. *Hartford Steam Boiler Inspection Co. vs. Harrison*, 301 U.S. 459. It "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis." *Gulf, C. & S. F. Ry. Co. vs. Ellis*, 165 U.S. 150, 155. See, also, *Washington Nat. Ins. Co. vs. Board of Review of New Jersey Unemployment Compensation Commission*, 64 A. 2d 443 (Supreme Court of New Jersey, 1949).

CONCLUSION

Upon all of the foregoing it is respectfully submitted that the decision of the Supreme Court of North Carolina in this case construing and applying the provisions of a state statute affecting the rights of these appellants, presents questions under the Fourteenth Amendment of the United States Constitution which are so substantial as to require for their resolution plenary consideration by this Court, with briefs on the merits and oral argument.

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APPENDIX

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

July 18, 1962

Decision of R. B. Overton,
Special Appeals Deputy

Decision No. 541-L

In the Matter of:

J. K. ABERNATHY
SS No. 244-42-7854

Employee, et al, and
Eastern Air Lines, Incorporated,
Employer.

ISSUE: Labor Dispute — Section 96-14(4) of the Employment Security Law of North Carolina.

Statement of Case:

This matter coming on to be heard and being heard before the undersigned Special Appeals Deputy on July 12, 1962, in the Superior Court Room, Mecklenburg County Courthouse, Charlotte, North Carolina, after due notice to all parties. The purpose of the hearing was to determine if the unemployment of the employees of Eastern Air Lines, Incorporated, beginning June 23, 1962, was due to a labor dispute in active progress at the factory, establishment, or other premises at which they are or were last employed, and further to determine if such individuals are disqualified for unemployment insurance bene-

fits by reason thereof. Appearances were Mr. Warren C. Stack and Mr. James L. Cole of the law offices of Mr. Warren C. Stack, Attorney, 900 Wachovia Bank Building, Charlotte, North Carolina, representing the Airline Pilots Association, and Mr. Ernest W. Machen and Mr. J. W. Alexander, Jr., of the law firm of Blakeney, Alexander & Machen, North Carolina National Bank Building, Charlotte, North Carolina, representing all employees except pilots and flight engineers, and Mr. Harold N. Hill, Jr., of the law firm of Gambrell, Harlan, Russell, Moye & Richardson, Suite 825, C & S Bank Building, Atlanta, Georgia, representing Eastern Air Lines, Inc. Also present was Mr. Malcolm F. Plaeger of Eastern Air Lines, Incorporated, and Mr. M. I. Perkins, Charlotte Station Manager, Eastern Air Lines, Incorporated, and a group of approximately three hundred employees.

Findings of Facts

1. Eastern Air Lines, Incorporated, hereinafter referred to as the employer, is a corporation engaged in the business of operating an air transport system, whereby passengers and cargo are transported in interstate commerce by means of airplanes, serving twenty-six states in the eastern half of the United States and one hundred and twenty cities, and in addition thereto serving Mexico City, Puerto Rico, Bermuda, and Canada.

2. The employer employs seventeen thousand nine hundred and six employees throughout its system with between six hundred and fifty and seven hundred being based in North Carolina working at or out of the airports and/or cities served in this State.

3. The classifications of the employees utilized by the employer consist of various skills and vocations, among which are mechanics and related skills, pilots, stewards and stewardesses, flight engineers, communication workers, dispatchers, and various clerical workers, and others, including some non-union personnel.

4. The employees are represented by the following unions or associations according to their skills and vocations: (1) International Association of Machinists; (2) Airline Pilots Association; (3) Airline Stewards and Stewardesses Association; (4) Flight Engineers International Association; (5) Communication Workers of America Union; and (6) Airline Dispatchers Association. Such unions or associations have been duly certified under the Federal Statutes as the bargaining agent for their members and all other personnel performing similar or related duties.

5. That in its system the employer employs five hundred and seventy-five flight engineers whose services are utilized on four-engine aircraft. Some such four-engine aircraft land and take off with passengers and cargo at all airports in the system located in North Carolina; namely, Charlotte, Raleigh-Durham, and Greensboro-High Point, taking on passengers and cargo at each airport as the necessity arises. That none of the flight engineers are based in North Carolina, although they fiy in and out of the various North Carolina airports on schedules of all four-motored airplanes serving North Carolina.

6. That on June 23, 1962, the five hundred and seventy-five flight engineers went on strike and refused to carry out their work assignments. This strike

and refusal to work was in protest of the failure of the employer and the bargaining agent representing flight engineers to reach an agreement as to the qualifications of the flight engineers, there being a difference of opinion between such parties as to whether the flight engineers should also be qualified as pilots.

7. That in consequence of the strike of the flight engineers the employer cancelled all flights and furloughed several thousand employees, including its employees in North Carolina, a list of which is hereto attached marked "Exhibit A." That those individuals whose names appear on "Exhibit A" hereto attached have been unemployed since June 23, 1962, and their unemployment is due to the dispute or controversy in existence between the flight engineers and the employer. That the controversy between the flight engineers and the employer was still in existence as of the date of the hearing before the undersigned Special Appeals Deputy.

8. That prior to June 23, 1962, the President of the United States appointed an Emergency Presidential Board for the special purpose of hearing the differences between the flight engineers and the employer with instructions to recommend a settlement of such differences. That such Emergency Presidential Board made its recommendation and the bargaining agent representing the flight engineers refused to accept all recommendations as submitted, particularly refusing to accept the recommendation that the qualifications of the flight engineers be arbitrated. That settlement of such controversy was still pending at the time of the hearing before the undersigned Special Appeals Deputy, and that all those individuals whose names

appear on "Exhibit A" were still unemployed as of the date of the hearing before the undersigned Special Appeals Deputy.

9. That in addition to those individuals whose names appear on "Exhibit A," five individuals, namely: Marian J. Hehs, S. S. No. 294-32-8207, Edwin D. Meador, S. S. No. 223-16-0879; Henry Scott McConnell, S. S. No. 223-20-4378; Linda Lee Emory, S. S. No. 244-66-8294, and Frances Gail Hartness, S. S. No. 240-66-5700, have filed claims against the Employment Security Commission of North Carolina on interstate claims, such individuals having been transferred from employment in North Carolina to other points on the system of the employer and having been laid off for the same reason as those individuals whose names appear on "Exhibit A."

Reasons and Conclusions of Law:

Under the provisions of the Employment Security Law of North Carolina, namely: Section 96-14(4), it is provided as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials

or services necessary to the continued and usual operation of the premises at which he is or was last employed . . . ."

The 1961 Legislature re-wrote the above section of the Employment Security Law to read as above set forth. Prior to July 1, 1961, this specific section of the law read as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that —

"a. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: . . . ."

During the month of March 1961, this deputy was called upon to pass on the eligibility of the employees of this employer, Eastern Air Lines, Incorporated, for unemployment insurance benefits during a strike called by the identical union that called the strike in this case, such strike having been called for the same

reason — a dispute over the qualifications of the flight engineers.

In deciding that case, the same being Decision No. 518-L, it was ruled that all individuals who were unemployed in consequence of a stoppage of work attributable to a labor dispute at the plant or premises of Eastern Air Lines, Incorporated, were eligible with the exception of the flight engineers, pilots, and flight attendants, it being concluded that the pilots flight engineers, and flight attendants were in a different class from other employees, and, therefore, the other employees came within the exceptions as set forth in the statute in effect at that time. It will be noted that under the law in effect prior to July 1, 1961, it was provided that the disqualifications prescribed by the statute should not apply if it was shown to the satisfaction of the Commission that such individuals were not participating in, financing, or directly interested in the labor dispute, and that they did not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurred, any of whom were participating in, or financing, or directly interested in the dispute.

In amending and re-writing the disqualifying section applicable to labor disputes, the 1961 Legislature did not retain any of the provisions of the prior law providing exceptions thereto. Therefore, the statute as now written is interpreted to mean that all individuals who become unemployed by reason of a labor dispute in active progress at the factory, establishment, or other premises at which they are or were last employed must be disqualified from receiving unem-

ployment insurance benefits, irrespective of the grade or class of such individuals or their interest in the dispute or their participation in the dispute.

The question then presents itself as to whether a labor dispute was in active progress at the factory, establishment, or premises of Eastern Air Lines, Incorporated. From the findings of fact above set forth it is concluded that a labor dispute was in active progress between Eastern Air Lines, Incorporated, and the flight engineers on June 23, 1962, at the time of the strike or walkout of the flight engineers, and that such labor dispute was still in active progress as of July 12, 1962. It is further concluded that the phrase "at the factory, establishment, or other premises," as used in the statute and as applicable to this case, encompasses the entire system of Eastern Air Lines, Incorporated. It, therefore, follows that any of the individuals employed in the system of Eastern Air Lines, Incorporated, who are unemployed must be disqualified from receiving benefits under the Employment Security Law of North Carolina as long as such labor dispute continues in active progress.

Decision:

It is, therefore, ORDERED, ADJUDGED AND DECREED that Marian J. Hehs, S. S. No. 294-32-8207; Edwin D. Meador, S. S. No. 223-16-0879; Henry Scott McConnell, S. S. No. 223-20-4378; Linda Lee Emory, S. S. No. 244-66-8294; and Frances Gail Hartness, S. S. No. 240-66-5700; and all those individuals whose names appear on "Exhibit A" shall be and the same are disqualified from receiving unemployment insurance benefits beginning June 23, 1962, through July

12, 1962, and continuing as long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers remains in active progress and their unemployment is caused thereby.

R. B. OVERTON

Special Appeals Deputy.

Decision Mailed: July 18, 1962

Appeal Rights Expire: July 30, 1962.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

August 10, 1962

Decision of the Full Commission

Decision No. 3301

In the Matter of:

J. K. ABERNATHY
SS No. 244-42-7854

Employee, et al

Eastern Air Lines, Incorporated
Employer

Section 9614 (4) — Labor Dispute: "An individual shall be disqualified for benefits: (4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be

disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit."

Origin of Appeal:

This cause came on to be heard by and before the Full Commission at its office in Raleigh, North Carolina, on Friday, August 10, 1962, after due notice of hearing to the interested parties. The purpose of the hearing was to pass upon the appeals filed on behalf of the employees of Eastern Air Lines, Incorporated, to a decision of the Special Appeals Deputy, No. 541-L, and for the purpose of a Commission review of the decisions of the Special Appeals Deputy numbers 543-L, 544-L and 546-L, involving other employees of Eastern Air Lines, Incorporated, and for the purpose of passing upon a claim filed in Chicago, Illinois, by one Frances G. Arrowood, SS No. 243-60-1009, said claim having been removed to the Full Commission as a result of an order of the Chairman dated August 8, 1962. R. F. Martin, Director Unemployment Insurance Division, made a formal request to remove such claim so that it might be reviewed along with the other matters on appeal before the Commission. The hearing was also held for the purpose of determining whether all of such claimant-employees of Eastern Air Lines, Incorporated, should be disqualified under the provisions of Section 96-14 (4) of the Employment Security Law. Appearances before the Commission were Mr. Ernest W. Machen of the law firm of Blakeney, Alexander & Machen, Charlotte, North Carolina, representing all employees

except pilots and flight engineers, and Mr. James L. Cole of the law office of Mr. Warren C. Stack, Charlotte, North Carolina, representing the Airline Pilots Association. Also present were Mr. Malcolm F. Plaeger, Area Manager for Eastern Air Lines, Incorporated, Charlotte, North Carolina, J. T. Brosnan, Station Manager, Eastern Air Lines, Incorporated, Raleigh-Durham Airport, J. W. Goodwin, Sales Manager, Eastern Air Lines, Incorporated, Raleigh, North Carolina, and H. N. Schofield, Operations Supervisor, Eastern Air Lines, Incorporated, Raleigh-Durham Airport. In addition, there was also present a small group of employees of Eastern Air Lines, Incorporated. The case was presented to the Commission by W. D. Holoman, Chief Counsel.

Findings of Fact:

1. Eastern Air Lines, Incorporated, hereinafter referred to as the employer, is a corporation engaged in the business of commercial air transportation, transporting passengers, U. S. mail, and cargo in interstate commerce by means of airplanes, serving twenty-six States in the eastern half of the United States and one hundred and twenty cities, and in addition thereto, serving Mexico City, Puerto Rico, Bermuda and Canada.

2. The employer normally employs seventeen thousand nine hundred and six employees throughout its system with between six hundred and fifty and seven hundred being based in North Carolina working at or out of the airports and/or cities served in this State.

3. The classification of the employees utilized by the employer consists of various skills and vocations,

among which are mechanics and related skills, pilots, stewards, stewardesses, flight engineers, communication workers, dispatchers, and various clerical workers, and others, including some nonunion personnel.

4. The employees of Eastern Air Lines, Incorporated, are represented through its system by the following unions or associations according to their skills and vocations: (1) International Association of Machinists; (2) Airline Pilots Association; (3) Airline Stewards and Stewardesses Association; (4) Flight Engineers International Association; (5) Communication Workers of America Union, and (6) Airline Dispatchers Association. Such unions or associations have been duly certified under the Federal Statutes as the bargaining agents for their members and all other personnel performing similar or related duties, and such bargaining is on a system-wide basis.

5. In its system the employer employs five hundred and seventy-five flight engineers whose services are utilized on four-engine aircraft throughout its system. Some of such four-engine aircraft land and take off with passengers and cargo at all airports in the system located in North Carolina; namely, Charlotte, Raleigh-Durham and Greensboro-High Point, taking on passengers and cargo at each airport as the necessity arises. Jet planes belonging to the employer also land and take off from the airport in Charlotte taking passengers and cargo to and from that airport as the necessity arises. Flight engineers are employed and used on all four-engine and jet aircraft landing and taking off in North Carolina. None of the flight engineers are based in North Carolina although they fly in and out of the various airports on schedules of four-motored piston driven planes and all jet planes

serving North Carolina. The flight engineers perform services at each of the company's facilities in North Carolina and elsewhere throughout its entire system. When the four-engine piston driven planes and jet planes land at the North Carolina airports, the flight engineers inspect the planes for safety airworthiness and determine the distribution of gasoline.

6. Approximately thirty-five percent of the planes used by the employer in its system are two-engine piston aircraft and on all two-engine aircraft the services of flight engineers are not used. Approximately sixty-five percent of the planes used by the employer in its system consist of four-engine piston planes and jets, all of which utilize the services of flight engineers.

7. On June 23, 1962, the five hundred and seventy-five flight engineers went on strike and refused to carry out their work assignments. This strike and refusal to work was in protest of the failure of the employer and the bargaining agent representing the flight engineers to reach an agreement as to the qualifications of the flight engineers, there being a difference of opinion between such parties as to whether the flight engineers should also be qualified as pilots. Beginning on June 23, 1962, and continuing through the date of the hearing by the Special Appeals Deputy on July 12, 1962, the flight engineers failed and refused to perform their services in bringing planes in and out of the facilities of the employer in North Carolina, and elsewhere.

8. In consequence of the strike of the flight engineers, the employer cancelled all flights and furloughed several thousand employees, including its

employees in North Carolina, a list of which is hereto attached and marked "Exhibit A." Those individuals whose names appear on "Exhibit A" hereto attached were unemployed beginning June 24, 1962, through July 12, 1962, the date of the hearing before the Special Appeals Deputy, and their unemployment is due to the dispute or controversy in existence between the flight engineers and the employer; that the controversy between the flight engineers and the employer was still in existence as of the date of the hearing before the Special Appeals Deputy on July 12, 1962.

9. Prior to June 23, 1962, the President of the United States appointed an Emergency Presidential Board for the special purpose of hearing the differences between the flight engineers and the employer with instructions to recommend a settlement of such differences. Such Emergency Presidential Board made its recommendations and the bargaining agent representing the flight engineers refused to accept all recommendations as submitted, particularly refusing to accept the recommendation that the qualifications of the flight engineers be arbitrated. The settlement of such controversy was still pending at the time of the hearing before the Special Appeals Deputy, and all those individuals whose names appear on "Exhibit A" were still unemployed as of the date of the hearing before the Special Appeals Deputy.

. . .

Issue:

What are the claimant-employees' rights to benefits under the Employment Security Law?

Reasons and Conclusions of Law:

Under the provisions of the Employment Security Law of North Carolina; namely, Section 96-14 (4), it is provided as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. . . ."

The 1961 Legislature re-wrote Section 96-14 (4) of the Employment Security Law to read as above set forth. Prior to July 1, 1961, this specific section of the law read as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work that exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission —

"a. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: . . . ."

During the month of March 1961, a Special Appeals Deputy was called upon to pass on the eligibility of the employees of this employer, Eastern Air Lines, Incorporated, for unemployment insurance benefits during a strike called by the identical union that called the strike in this case, such strike having been called for the same reason — a dispute over the qualifications of the flight engineers.

In deciding that case, the same being Decision No. 518-L, it was ruled that all individuals who were unemployed in consequence of a stoppage of work attributable to a labor dispute at the plant or premises of Eastern Air Lines, Incorporated, were eligible with the exception of the flight engineers, pilots, and flight attendants, it being concluded that the pilots, flight engineers, and flight attendants were in a different class from other employees and, therefore, the other employees came within the exceptions set forth in the statute in effect at that time. It will be noted that under the law in effect prior to July 1, 1961, it was provided that the disqualification prescribed by the statute should not apply if it was shown to the satisfaction of the Commission that such individuals were

not participating in, financing, or directly interested in the labor dispute, and that they did not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurred, any of whom were participating in, or financing, or directly interested in the dispute.

In amending and re-writing the disqualifying section applicable to labor disputes, the 1961 Legislature did not retain any of the provisions of the prior law providing exceptions thereto. The statute, therefore, as now written, is interpreted to mean that all individuals who become unemployed by reason of a labor dispute in active progress at the factory, establishment, or other premises at which they are or were last employed, must be disqualified from receiving unemployment insurance benefits, irrespective of the grade or class of such individuals or their interest in the dispute or their participation in the dispute.

The question then presents itself as to whether a labor dispute was in active progress at the factory, establishment, or premises of Eastern Air Lines, Incorporated. From the findings of fact set forth above it is concluded that a labor dispute was in active progress between Eastern Air Lines, Incorporated, and the flight engineers on June 23, 1962, at the time of the strike or walkout of the flight engineers, and that such labor dispute was still in active progress as of July 12, 1962.

The record shows that when the four-engine piston driven planes and jet planes land or take off at the North Carolina airports, the flight engineers inspect the planes for safety and airworthiness and deter-

mine the distribution of gasoline. It is reasonable to conclude and it is so concluded that they perform similar services at all of the facilities of the company throughout its system, and also perform services on the planes while in the air. The service of the flight engineers were necessary to the conduct of the usual business of the company at all three airports in North Carolina, as their services were required on all four-engine piston driven and jet planes landing at all three airports in this State. The services of the flight engineers and other personnel on the four-engine craft and jets are not performed solely at their base or bases of their operations, but throughout the entire system, including the three airports in North Carolina.

The flight engineers failed and refused to perform their services in bringing the planes in and out of the company's facilities in North Carolina as well as all of the other facilities of the company throughout its system. It is concluded that such failure on the part of the flight engineers constituted a strike, both in North Carolina, and elsewhere throughout the system, which resulted in the grounding of four-engine piston driven planes and jet planes, which constituted approximately sixty-five percent of the company's business. As a result of the strike of the flight engineers, the services performed by the North Carolina employees were affected to the extent that their services were not needed and the company was forced to cancel all flights and close down its operations at all of the facilities throughout its system. It can only be concluded that the establishment, as contemplated by the statutes, is not and cannot be said to be confined to one facility or to one State, but covers all

facilities in the company's system because of the nature of its operations and because the services of one group of employees is dependent upon the services of other groups. It is, therefore, concluded that the phrase "at the factory, establishment, or other premises" as used in the statute, which is applicable to this case, encompasses the entire system of Eastern Air Lines, Incorporated. It, therefore, follows that any of the individuals in the system of Eastern Air Lines, Incorporated, who are unemployed due to the labor dispute must be disqualified from receiving benefits under the Employment Security Law of North Carolina as long as such labor dispute continues in active progress.

It is concluded that all individuals whose names appear on "Exhibit A" hereto attached were unemployed beginning June 24, 1962, through July 12, 1962, and their unemployment was due to a labor dispute in active progress at the factory, establishment or other premises at which they were last employed. Consequently, all of the individuals whose names appear on "Exhibit A" hereto attached must be disqualified from receiving benefits beginning June 24, 1962, through July 12, 1962, and continuing thereafter so long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers remains in active progress and their unemployment is caused thereby.

In the determination of this case, the Commission considered what it believed to be the intent of the Legislature when it passed Section 96-14 (4) of the General Statutes. The wording of the statute is clear

and unambiguous. The unmistakable legislative intent is plainly spelled out in Section 96-14 (4) of the General Statutes. It will be noted from such section that an individual shall be disqualified for any week with respect to which it is found that his total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which he is or was last employed. It is that portion of Section 96-14 (4) which we are considering in this case as it has been established that the phrase "at the factory, establishment, or other premises," as used in the statute, encompasses the entire system of Eastern Air Lines, Incorporated, and not just a segment thereof. It should be pointed out, however, that Section 96-14 (4) further provides that if such individual is unemployed because of a labor dispute in active progress at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and *which supplies material and services necessary to the continued and usual operations of the premises at which he is or was last employed*, he is likewise disqualified from receiving benefits so long as the labor dispute is in active progress.

It is obvious from this latter portion of Section 96-14 (4) that it was the intent of the Legislature to disqualify individuals from receiving benefits even if there were no labor dispute in active progress here in North Carolina, but if there was a labor dispute in active progress at another place owned by the employer, which supplies materials and services necessary to the continued and usual operation of the

premises at which the individuals in North Carolina were employed. So, even if there had been no labor dispute in active progress at the establishment or other premises of the employer in this State, the claimants in this proceeding would have been disqualified by reason of a labor dispute in active progress at another place owned by the employer.

Decision:

It is now, therefore, ordered, adjudged and decreed that Marian J. Hehs, SS No. 294-32-8207; Edwin D. Meador, SS No. 223-16-0879, Henry Scott McConnell, SS No. 223-20-4378; Linda Lee Emory, SS No. 244-66-8294; Frances Gail Hartness, SS No. 240-66-5700, and Frances G. Arrowood, SS No. 243-60-1009, and all those individuals whose name appear on "Exhibit A" shall be and the same are disqualified from receiving unemployment insurance benefits beginning June 24, 1962, through July 12, 1962, and continuing as long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers remains in active progress and their unemployment is caused thereby.

. . .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

/s/ Henry E. Kendall
Henry E. Kendall,
Chairman.

ATTEST:
/s/ R. F. Martin
R. F. Martin,
Secretary

NOTICE: Any party aggrieved by this decision may appeal to the Superior Court by:

(1) Giving written notice of the appeal to the Employment Security Commission, Box 589, Raleigh, North Carolina, within ten (10) days from the date this decision is mailed; and

(2) If the grounds of the appeal are not stated at the time the notice of appeal is filed, the party must file with the Commission a statement giving the grounds of his appeal within twenty (20) days from the date this decision is mailed.

Appeal Entered:	June 28, 1962
Case Received:	August 8, 1962
Decision Mailed:	August 31, 1962.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE SUPERIOR COURT
26TH JUDICIAL DISTRICT

In the Matter of: J. K. ABERNATHY SS No. 244-42-7854 Employee, et al and Eastern Air Lines, Incorporated Employer and EMPLOYMENT SECURITY COMMISSION of North Carolina Raleigh, North Carolina	JUDGMENT

This cause, coming on to be heard and being heard before the undersigned Judge Presiding over the October 22, 1962, Special B Civil Term of Mecklenburg County Superior Court upon appeals from a decision of the Employment Security Commission of North Carolina rendered on August 31, 1962, entitled "In The Matter Of: J. K. Abernathy, SS No. 224-42-7854, Employee, et al, and Eastern Air Lines, Incorporated, Employer," Decision No. 3301, pursuant to Notice of Appeal filed on September 4, 1962, in behalf of the employee claimants who are members of the Charlotte Council of the Air Line Pilots Association and Notice of Appeal filed on September 7, 1962, in behalf of all other employee claimants covered by Decision

No. 3301, Formal Statement of Grounds of Appeal having been filed on September 6, 1962, in behalf of the claimants who are members of the Charlotte Council of the Air Line Pilots Association, and Statement of Grounds for Review and Exceptions to the Commission's Decision having been filed on September 15, 1962, in behalf of all other employee claimants covered by Decision No. 3301, all in accordance with the provisions of North Carolina General Statutes Section 96-15, Subparagraph (i);

AND THE COURT having heard argument of counsel for each of the above described categories of claimants and argument of General Counsel for the Employment Security Commission, and having considered the entire record as returned to this Court pursuant to the requirements of the above mentioned Section of the General Statutes, and being otherwise fully advised as to all matters pertinent to said appeal;

AND THE COURT being of the opinion that the Employment Security Commission is in error in finding and concluding that the claimants are disqualified from receiving Employment Security benefits by reason of the provisions of G. S. 96-14(4) upon the facts and circumstances revealed by the evidence in the record, and that its decision is therefore in error and should be set aside; AND THE COURT being of the further opinion that if, upon the record before the Commission, the provisions of G. S. 96-14(4) should be construed as imposing a disqualification upon the appealing claimants who are otherwise eligible for unemployment benefits, then the provisions of G. S. 96-14(4), as so applied under the facts and circumstances of this case established by the record herein, constitute an unlawful discrimination against these

claimants in violation of rights guaranteed to them by the Statutes and Constitution of the United States and by the Constitution of the State of North Carolina.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that Decision No. 3301 rendered by the Employment Security Commission of North Carolina on August 31, 1962, be and the same is hereby reversed and set aside.

THIS THE 25th DAY OF OCTOBER, 1962.

/s/ H. L. Riddle, Jr.
Judge Presiding

. . .

IN THE

SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1963

In the Matter of: J. K. ABERNATHY SS No. 244-42-7854 Employee, et al Eastern Air Lines, Incorporated Employer and EMPLOYMENT SECURITY COMMISSION of North Carolina Raleigh, North Carolina.	No. 233 — FROM MECKLENBURG

Appeal by the Employment Security Commission of North Carolina from Riddle, S. J., October, 1962 Special "B" Term, Mecklenburg Superior Court.

This proceeding was instituted before the Employment Security Commission of North Carolina, hereafter called the Commission, by J. K. Abernathy and others, employees of Eastern Air Lines, Inc. (hereafter called Eastern), who filed claims for unemployment insurance benefits during the time they were out of work or furloughed from their jobs as a result of a labor dispute between the flight engineers and Eastern. In due course the Chairman of the Commission ordered the claims referred to R. B. Overton, Special Appeals Deputy, for hearing and disposition. After due notice, the interested parties appeared before Mr.

Overton on July 12, 1962. After concluding the hearing on July 18, 1962, the Appeals Commissioner made detailed findings of fact, stated conclusions of law, and ordered that "all those individuals whose names appear on 'Exhibit A' shall be and the same are disqualified from receiving unemployment insurance benefits beginning June 23, 1962, through July 12, 1962, and continuing as long as the labor dispute between Eastern Air Lines, Inc., and the flight engineers remain in active progress and their unemployment is caused thereby."

The parties adversely affected by the finding, conclusion, and order of the Special Appeals Deputy, including the director, Unemployment Insurance Division, petitioned for and were granted a review by the full Commission. Hearing on review by the Commission began on August 10, 1962. At the conclusion of the hearing the Commission (among other things not deemed essential to the dispute) made these findings:

"1. Eastern Air Lines, Inc., hereinafter referred to as the employer, is a corporation engaged in the business of commercial air transportation, transporting passengers, U. S. mail, and cargo in interstate commerce by means of airplanes serving twenty-six states in the eastern half of the United States and one hundred and twenty cities, and in addition thereto, serving Mexico City, Puerto Rico, Bermuda and Canada.

"2. The employer normally employs seventeen thousand nine hundred and six employees throughout its system with between six hundred and fifty and seven hundred being based in North Carolina

working at or out of the airports and or cities served in this State.

"3. The classification of the employees utilized by the employer consists of various skills and vocations, among which are mechanics and related skills, pilots, stewards, stewardesses, flight engineers, communication workers, dispatchers, and various clerical workers, and others, including some non-union personnel.

"4. The employees of Eastern Air Lines, Inc. are represented through its system by the following unions or associations according to their skills and vocations: (1) International Association of Machinists; (2) Airline Pilots Association; (3) Airline Stewards and Stewardesses Association; (4) Flight Engineers International Association; (5) Communication Workers of America Union; and (6) Airline Dispatchers Association. Such unions or associations have been duly certified under the Federal Statutes as the bargaining agents for their members and all other personnel performing similar or related duties, and such bargaining is on a system-wide basis.

"5. In its system the employer employs five hundred and seventy-five flight engineers whose services are utilized on four-engine aircraft throughout its system. Some of such four-engine aircraft land and take off with passengers and cargo at all airports in the system located in North Carolina; namely, Charlotte, Raleigh-Durham and Greensboro-High Point, taking on passengers and cargo at each airport as the necessity arises. Jet planes belonging to the employer also land and take off

from the airport in Charlotte taking passengers and cargo to and from that airport as the necessity arises. Flight engineers are employed and used on all four-engine and jet aircraft landing and taking off in North Carolina. None of the flight engineers are based in North Carolina although they fly in and out of the various airports on schedules of four-motored piston driven planes and all jet planes serving North Carolina. The flight engineers perform services at each of the company's facilities in North Carolina and elsewhere throughout its entire system. When the four-engine piston driven planes and jet planes land at the North Carolina airports, the flight engineers inspect the planes for safety airworthiness and determine the distribution of gasoline.

"6. Approximately thirty-five per cent of the planes used by the employer in its system are two-engine aircraft and on all the two-engine aircraft the services of flight engineers are not used. Approximately sixty-five per cent of the planes used by the employer in its system consist of four-engine piston planes and jets, all of which utilize the services of flight engineers.

"7. On June 23, 1962, the five hundred and seventy-five flight engineers went on strike and refused to carry out their work assignments. This strike and refusal to work was in protest of the failure of the employer and the bargaining agent representing the flight engineers to reach an agreement as to the qualifications of the flight engineers, there being a difference of opinion between such parties as to whether the flight engineers should also be qualified as pilots. Beginning on June 23, 1962,

and continuing through the date of the hearing by the Special Appeals Deputy on July 12, 1962, the flight engineers failed and refused to perform their services in bringing planes in and out of the facilities of the employer in North Carolina, and elsewhere.

"8. In consequence of the strike of the flight engineers, the employer cancelled all flights and furloughed several thousand employees, including its employees in North Carolina, a list of which is hereto attached and marked 'Exhibit A.' Those individuals whose names appear on 'Exhibit A' hereto attached were unemployed beginning June 24, 1962, through July 12, 1962, the date of the hearing before the Special Appeals Deputy, and their unemployment is due to the dispute or controversy in existence between the flight engineers and the employer; that the controversy between the flight engineers and the employer was still in existence as of the date of the hearing before the Special Appeals Deputy on July 12, 1962. * * *"

"From the findings of fact . . . it is concluded that a labor dispute was in active progress between Eastern Air Lines, Inc., and the flight engineers on June 23, 1962, at the time of the strike or walkout of the flight engineers, and that such labor dispute was still in active progress as of July 12, 1962." The Commission, by Decision No. 3301, denied the claims upon the ground that G. S. 96-14 (4) disqualified the laid-off employees for insurance benefits. Upon appeal and after hearing, the Superior Court entered the following order:

"AND THE COURT being of the opinion that the Employment Security Commission is in error in finding and concluding that the claimants are disqualified from receiving Employment Security benefits by reason of the provisions of G. S. 96-14 (4) upon the facts and circumstances revealed by the evidence in the record, and that its decision is therefore in error and should be set aside; AND THE COURT being of the further opinion that if, upon the record before the Commission, the provisions of G. S. 96-14 (4) should be construed as imposing a disqualification upon the appealing claimants who are otherwise eligible for unemployment benefits, then the provisions of G. S. 96-14 (4), as so applied under the facts and circumstances of this case established by the record herein, constitute an unlawful discrimination against these claimants in violation of rights guaranteed to them by the Statutes and Constitution of the United States and by the Constitution of the State of North Carolina.

"NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that Decision No. 3301 rendered by the Employment Security Commission of North Carolina on August 31, 1962, be and the same is hereby reversed and set aside."

The Employment Security Commission of North Carolina appealed.

W. D. Holoman, R. B. Billings, D. G. Ball, for the Employment Security Commission of North Carolina, appellant

Gambrell, Harlan, Russell, Moye & Richardson,

By: E. Smythe Gambrell, William G. Bell, Jr., Harold N. Hill, Jr., Sidney F. Wheeler, for Eastern Air Lines, Inc., appellee

Blakeney, Alexander & Machen,

By: Bailey Patrick, Jr., for North Carolina Employees of Eastern Air Lines, Inc., except the 123 Captains and Air Line Pilots based in North Carolina, appellees

Warren C. Stack,

By: James L. Cole, for Charlotte Council, Air Line Pilots Association, Eastern Air Lines, Inc., appellees

Joyner & Howison,

By: William T. Joyner, for Harriet Cotton Mills and Henderson Cotton Mills, *amicus curiae*

HIGGINS, J.

Here for review is the Superior Court judgment that the Employment Security Commission committed error (1) "In finding and concluding that claimants are disqualified from receiving Employment Security benefits by reason of the provisions of G. S. 96-14 (4) upon the facts and circumstances revealed by the evidence in the record, . . ." and (2) If the 1961 amendment should be construed as a disqualification, then it constitutes an unlawful discrimination in violation of the State and Federal Constitution. From this judgment the Commission appealed. The right to appeal is given by G. S. 96-15.

In their appeal to the Superior Court from the Commission, the claimants, by exceptions, challenged the sufficiency of the evidence to support the Commission's findings of fact. The trial court did not pass on these exceptions. It seems from the wording of the judgment the court did not attempt to set aside any of the findings. However, to eliminate any uncertainty in this respect, we have reviewed all the evidence and conclude that it furnishes support for the Commission's findings of fact. Findings, supported by competent evidence, are conclusive on appeal. Employment Security Comm. v. Freight Lines, 248 N. C. 496, 103 SE 2d 829; In Re Stutts, 245 N. C. 405, 95 SE 2d 919; Employment Security Commission v. Simpson, 238 N. C. 296, 77 SE 2d 718; G. S. 96-15 (i). The pivotal question, therefore, is whether the claimants are disqualified by the 1961 amendment to G. S. 96-14.

In the judicial process of construing legislation the courts take a long look at the purposes to be accomplished. The Congress, using the English Act of 1911 as a pattern, passed the Federal Social Security Act on August 14, 1935. One of its major purposes was to give aid, to be administered through State agencies, to those out of work through no fault of their own. To be eligible for Federal contributions, a State agency was required to levy an unemployment compensation tax on employers to supplement the Federal contribution. In its extra session in 1936 the North Carolina General Assembly enacted its Unemployment Compensation Law to take advantage of the Federal grant. One of its major purposes was to provide a fund by systematic accumulations during periods of employment to be retained and used for the benefit of persons furloughed from their jobs through no fault of their own.

Both the State and Federal Acts were passed at a time when the country appeared to be in the initial stages of recovery from a disastrous depression. The lessons learned in the early thirties were both fresh and poignant. The intent was to accumulate, by Federal grant and by an employer's tax, an insurance fund which in a time of need would tide over workers temporarily laid off because work was not available. Employers in all probability did not contemplate their tax money would be used to encourage any work stoppage resulting from a labor dispute. In discussing this background, the Nebraska Law Review, Vol. 37, No. 4, of June, 1958, contained the following:

> "(1) It was not considered wise to permit the fund to be used to finance or subsidize workers engaged in trade disputes, because it was feared that if benefits were available to all workers unemployed as a result of a trade dispute, they would be encouraged to suspend work in furtherance of their position in the dispute, thereby imposing an unfair burden upon the employer, and working injury upon the national economy and upon the public at large; (2) because there had been no previous experience, it was feared that payment of benefits when unemployment was due to a labor dispute might cause a severe drain upon the funds available, thereby defeating the primary purpose for which the fund was created — the payment of benefits when unemployment was due to 'fluctuations in trade.'"

It is doubtful whether in 1935-36 legislators — Federal or State — had in contemplation a time when a few specialists out on strike could force a shutdown

of a flourishing business employing nearly 18,000 persons in 26 States, the District of Columbia, Canada, Mexico and Puerto Rico. Neither was it contemplated that the insurance fund could be depleted by workers who were not actually participating in the strike but who were out of work because of it. The depletion of the insurance fund required further employer taxes.

As the years passed the original objects lost some of their clear outlines. Rules and regulations were relaxed permitting depletion of the fund for purposes not in contemplation when provision was made for it. However, in North Carolina the amendment of 1961 reversed the trend. Prior to July 1, 1961, G. S. 96-14 provided:

> "An individual shall be disqualified for benefits . . . (4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that — (a) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (b) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: Provided, for the purpose of this subdivision (4), that if in any case separate branches of work which

are commonly conducted as separate business in separate premises are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment, or other premises."

Effective July 1, 1961, the General Assembly, by Chapter 454, Session Laws of 1961, struck out all of Section 4 above quoted and substituted the following:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit."

The effect of the amendment was to eliminate from Section 4 the means therein provided by which an

employee might escape disqualification. Likewise, the amendment removed the provision that separate branches of work commonly conducted in separate premises or in separate departments of the same premises shall be deemed to be separate factories, establishments, or other premises. Instead the amendment extended the disqualification if the unemployment is caused by labor dispute in progress at the factory at which the worker was employed or at another place, either within or without this State, if owned or operated by the same employing unit and which supplies materials or services necessary to continue the operation where he was employed.

In this case planes carrying practically two-thirds of Eastern Air Lines' transportation business were grounded because flight engineers refused to operate or to service the planes. Only two-motor craft could operate without the flight engineers. These small planes were engaged in feeder operations on short flights. The heart of Eastern's business was the four-motor and jet planes. As a result of the labor dispute between Eastern and its flight engineers, Eastern was forced to shut down its operations and to close its terminals in North Carolina where claimants had been at work. So far as the results are concerned, it was immaterial where the flight engineers lived, or where their flights originated. When they left the planes, transportation stopped. Eastern's employees at the terminals in North Carolina were furloughed because Eastern was forced out of business by the strike.

Without force is the argument that flight engineers were not based in North Carolina and hence the terminals in this State constituted other plants, factories,

establishments, and premises of the employing unit. It must be remembered that new Section 4, in effect at the time the work stopped, extends the disqualification to workers at a factory, establishment, or other premise which supplies necessary materials or services to the plant where the claimants were last employed. The striking flight engineers refused to help man the planes to or from the terminals in North Carolina. This failure to perform this service caused the shutdown at the terminals where claimants were employed.

The many cases cited by the Air Line Pilots Association are not in point. Their brief states: "Since no statute has been found in any jurisdiction written in the discriminatory language of G. S. 96-14 (4), as amended, all cases reviewed reveal situations arising under Unemployment Security Acts which are similar to the North Carolina Unemployment Security Act prior to 1961." The Commission was bound by the disqualifying terms of the 1961 amendment. Its duty was to protect the integrity of the insurance fund and to be neutral between the management and the workers.

The disqualification resulted from the labor dispute between the flight engineers and Eastern. All flight engineers in the system were out on strike. Their duties were so integrated into Eastern's entire operation that the big planes were grounded because of their refusal to work. Cameron v. DeBoard, 230 Or. 411, 370 P. 2d 709; Depaoli v. Ernst, 73 Nev. 79, 309 P. 2d 363; Adamski v. State, Bureau of Unemployment Comp., 108 Ohio App. 198, 161 NE 2d 907; Spielmann v. Industrial Commission, 236 Wis. 240,

295 NW 1; Ford Motor Co. v. Abercrombie, 207 Ga. 464, 62 SE 209; Park v. Appeal Board of Michigan Employ. Sec. Com'n., 355 Mich. 103, 94 NW 2d 407; Magner v. Kinney, 141 Neb. 122, 2 NW 2d 689.

The cases here discussed, and many more therein cited, would seem sufficient to convince all but the highly skeptical that in passing the 1961 amendment the North Carolina General Assembly acted within its constitutional powers. "When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome." Sproles v. Binford, 286 U. S. 374, 52 S. Ct. 581, 76 L. ed. 1167; In re Stevenson, 237 N. C. 528, 75 SE 2d 520; Employment Security Com. v. Jarrell, 231 N. C. 381, 57 SE 2d 403; In re Steelman, 219 N. C. 306, 13 SE 2d 544. "Legislative bodies may distinguish, select, and classify objects of legislation. . . . They may prescribe different regulations for different classes. . . . The one requirement is that the ordinance must affect all persons similarly situated or engaged in the same business without discrimination." State v. Trantham, 230 N. C. 641, 55 SE 2d 198; see also, Bickett v. Tax Commission, 177 N. C. 433, 99 SE 415; Magoin v. Bank, 170 U. S. 283, 18 S. Ct. 594, 42 L. ed. 1037; City of Springfield v. Smith, 322 Mo. 1129, 19 SW 2d 1; Unemployment Compensation Com. v. Willis, 219 N. C. 709, 15 SE 2d 4; Steward Machine Co. v. Davis, 301 U. S. 548, 57 S. Ct. 883, 81 L. ed. 1279. The unemployment insurance acts of the states contain certain worker disqualifications, among them, (1) discharge for misconduct, (2) refusal to accept other suitable

employment, (3) participation in a strike. The power of the legislature to provide these disqualifications is not challenged. The further disqualification contained in the 1961 amendment involves a question of degree and not of principle.

For the reasons here stated, we hold the judgment of the Superior Court of Mecklenburg County was erroneous and must be

Reversed.

Rodman, J., took no part in the consideration and decision of this case.

JUDGMENT
SUPREME COURT OF NORTH CAROLINA

IN THE MATTER OF:
J. K. ABERNATHY, SS No. 244-42-7854, Employee, et al

EASTERN AIR LINES, INC., Employer

and

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA, Raleigh, North Carolina

SPRING TERM, 19 63

No. 233 Mecklenburg County.

This cause came on to be argued upon the transcript of the record from the Superior Court Mecklenburg County: Upon consideration whereof, this Court is of opinion that there is --- error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Carlisle W. Higgins Justice, be certified to the said Superior Court, to the intent that the JUDGMENT IS REVERSED

And it is considered and adjudged further, that the Employment Security Commission do pay *the costs of the appeal in this Court incurred, to wit, the sum of* Seven and no/100 *dollars ($7.00), and execution issue therefor. Certified to Superior Court this* 22nd *day of* April 196 3.

A TRUE COPY

Adrian J. Newton
Clerk of the Supreme Court.

By s/ Sarah B. Hanner
Sarah B. Hanner, Deputy